

CHAPTER 60
ASSESSMENTS, REFUNDS, APPEALS

[Prior to 12/17/86, Revenue Department[730]]

701—60.1(422) Notice of discrepancies.

60.1(1) *Notice of adjustment.* An employee of the department, designated by the director to examine returns and make audits, who discovers discrepancies in returns or learns that the income of the taxpayer may not have been listed, in whole or in part, or that no return was filed when one was due, is authorized to notify the taxpayer of the discovery by ordinary mail. The notice shall not be termed an assessment, and it may inform the taxpayer of the amount due if the information discovered is correct.

60.1(2) *Right of taxpayer upon receipt of notice of adjustment.* A taxpayer who has received notice of an adjustment in connection with a return may pay the additional amount stated to be due. If payment is made, and the taxpayer wishes to contest the matter, the taxpayer should then file claim for refund. However, payment will not be required until assessment has been made (although interest will continue to accrue if payment is not made). If no payment is made, the taxpayer may discuss with the employee who notified the taxpayer of the discrepancy, either in person or through correspondence, all matters of fact and law which the taxpayer considers relevant to the situation. Documents and records supporting the taxpayer's position may be required.

This rule is intended to implement Iowa Code sections 422.25, 422.28 and 422.66.

701—60.2(422) Notice of assessment. If after following the procedure outlined in subrule 60.1(2) no agreement is reached, and the taxpayer does not pay the amount determined to be correct, a notice of assessment shall be sent to the taxpayer by mail. If the period in which the correct amount of tax can be determined is nearly at an end, either a notice of assessment, without compliance with subrules 60.1(1) and 60.1(2), or a jeopardy assessment may be issued. All notices of assessment shall bear the signature of the director.

This rule is intended to implement Iowa Code sections 422.25, 422.30 and 422.66.

701—60.3(422) Refund of overpaid tax. The following are provisions for refunding or crediting to the taxpayer deposits or payments for tax in excess of amounts legally due.

60.3(1) A claim for refund of franchise tax may be made on a form obtainable from the department. Claims for refund should not be mailed in the same envelope or attached to the return. In the case of a claim filed by an agent of the taxpayer, a power of attorney must accompany the claim.

60.3(2) A franchise taxpayer shall not offset a refund or overpayment of tax for one year as a prior payment of tax of a subsequent year on the return of a subsequent year without authorization in writing by the department. The department may, however, apply an overpayment, or a refund otherwise due the taxpayer, to any tax due or to become due from the taxpayer.

60.3(3) When an overpayment of estimated tax is indicated on the face of the return, the overpayment will ordinarily be refunded to the taxpayer by the department without the filing of a formal claim for refund. If a refund of the indicated overpayment is not received within a reasonable period of time, a claim for refund may be filed by the taxpayer on an official form obtainable from the Taxpayer Services Section, Iowa Department of Revenue, P.O. Box 10457, Des Moines, Iowa 50306.

If an overpayment of income tax is claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a payment of the income tax for the succeeding taxable year and no claim for credit or refund shall be allowed.

When a taxpayer elects to have an overpayment credited to estimated tax for the succeeding year, interest may be properly assessed on a deficiency of income tax for the year in which the overpayment arose. If a taxpayer elects to have all or part of an overpayment shown on the return applied to the estimated income tax for the succeeding taxable year or refunded, the election is binding to the taxpayer.

An overpayment of tax may be used to offset any outstanding tax liability owed by the taxpayer, but once an elected amount is credited as a payment of estimated tax for the succeeding year, it loses its character as an overpayment for the year in which it arose and thereafter cannot offset any subsequently determined tax liability.

60.3(4) Refunds—statute of limitations for tax years ending before January 1, 1979. Rescinded IAB 11/24/04, effective 12/29/04.

60.3(5) Refunds—statute of limitations for tax years ending after January 1, 1979. The statute of limitations with respect to which refunds or credits may be claimed is:

a. The later of:

- (1) Three years after the due date of payment upon which refund or credit is claimed; or
- (2) One year after which such payment was actually made.

b. Six months from the date of final disposition of any federal income tax matter with respect to the particular tax year. The taxpayer, however, must have notified the department of the matter within six months after the specified three-year period. The term “matter” includes, but is not limited to, the execution of waivers and commencement of audits. The refund is limited to those matters between the taxpayer and the Internal Revenue Service which affect Iowa taxable income. *Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review*, 414 N.W.2d 113 (Iowa 1987).

c. For federal audits finalized on or after July 1, 1991, the taxpayer must claim a refund or credit within six months of final disposition of any federal income tax matter with respect to the particular tax year regardless when the tax year ended. It is not necessary for the taxpayer to have previously notified the department within the period of limitations specified in 60.3(5) “*a*”(1) of a matter between the taxpayer and the Internal Revenue Service in order to receive a refund or credit. The term “matter” includes, but is not limited to, the execution of waivers and commencement of audits. The refund or credit is limited to those matters between the taxpayer and the Internal Revenue Service which affect Iowa taxable income. *Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review*, 414 N.W.2d 113 (Iowa 1987).

d. Three years after the due date of the return for the year in which a net operating loss or capital loss occurs, which if carried back results in a reduction of tax in a prior period and an overpayment results.

60.3(6) Refunds—special statute of limitations. Notwithstanding the above periods of limitation, a claim for credit or refund is considered timely if the claim is filed with the department on or before June 30, 1999, if the taxpayer's federal income tax was refunded due to a provision in the Taxpayer Relief Act of 1997, Public Law 105-34, which affected the corporation's federal taxable income and the claim is based on the change in federal taxable income caused by the provisions of Public Law 105-34.

60.3(7) Refunds—statute of limitations for taxpayers who paid 90 percent of the tax by the due date and filed the original return in the six-month extended period. If a taxpayer has paid 90 percent of the income tax required to be shown due by the original due date of the return and has filed the original income tax return sometime in the six-month extended period after the original due date, the taxpayer may file an amended return within three years of the extended due date of the return and shall be within the statute of limitations for refund. This position is supported by the Iowa Supreme Court in *Conoco, Inc. v. Iowa Department of Revenue and Finance*, 477 N.W.2d 377 (Iowa 1991). See also 701—subrule 39.2(4) which pertains to the extended period for filing the Iowa income tax return when 90 percent of the tax is paid by the original due date of the Iowa income tax return.

See 701—subrule 55.3(7) for examples illustrating how this rule is applied.

This rule is intended to implement Iowa Code sections 422.66 and 422.73 as amended by 1998 Iowa Acts, Senate File 2357.

701—60.4(422) Abatement of tax. Iowa Code section 422.28 provides that a taxpayer may appeal to the director within 60 days any portion of tax, penalties or interest assessed against the taxpayer. If a taxpayer fails to appeal the assessment within the statutory period, the assessment becomes fixed as a matter of law. *Iowa Department of Revenue v. Ingwersen*, Des Moines County District Court, Case No. 17623, February 22, 1973; *Commonwealth v. Kettenacker*, 335 S.W.2d 339 (Ky); *Heasley v. Engen*, 124 N.W.2d 398 (N.D.). If, however, the statutory period for appeal has expired, the director may abate any portion of tax, penalties or interest assessed which the director determines is excessive in amount or erroneously or illegally assessed. However, for notices of assessment issued on or after January 1, 1995, see rule 701—7.31(421).

60.4(1) Assessments qualifying for abatement. To be subject to an abatement, an assessment must have been issued that exceeded the amount due as provided by the Iowa Code and the rules issued by the department interpreting the Code. If a taxpayer fails to appeal an assessment that is based upon the Iowa Code or the department's rules interpreting the Code within the statutory period, then the taxpayer cannot request an abatement of the assessment, or a portion thereof, beyond the statutory time for appeal.

Examples of assessment where abatements may be requested include, but are not limited to, the following:

1. Inclusion of income not required to be reported by Iowa Code or department rule.
2. Estimated or jeopardy assessments.
3. Disallowance of a deduction.
4. Disallowance of a credit.
5. Interest erroneously assessed.

6. Disallowance of separate accounting or an alternative method of allocation or apportionment where the taxpayer can prove by clear and cogent evidence that the statutory method of allocation and apportionment taxed income out of all reasonable proportion to the business activities within Iowa.

Abatement may not be requested where the taxpayer wishes to change an election made on a return as filed.

60.4(2) Procedures for requesting abatement. If it is determined that an assessment, or portion thereof, is excessive or has been erroneously or illegally assessed, the taxpayer shall make a written request to the director for abatement of that portion of the assessment that is excessive. All documents to verify the correct amount of tax liability must be attached to that written request. A request for abatement which is filed shall contain:

- a. The taxpayer's name and address;
 - b. A statement on the type of proceeding, e.g., franchise income tax, request for abatement; and
 - c. The following information:
 - (1) The nature of the tax, the taxable period or periods involved and the amount thereof that was excessive or erroneously or illegally assessed;
 - (2) Clear and concise statements of each and every error which the taxpayer alleges to have been committed by the director in the notice of deficiency. Each assignment of error shall be separately numbered;
 - (3) Clear and concise statements of all relevant facts upon which the taxpayer relies (documents verifying the correct amount of tax liability must be attached to this request);
 - (4) Reference to any particular statute or statutes and any rule or rules involved;
 - (5) The signature of the taxpayer or that of the taxpayer's representative;
 - (6) Description of records or documents which were not available or were not presented to department personnel prior to the filing of this request, if any;
 - (7) Any other matters deemed relevant and not covered in the above paragraphs.
- This rule is intended to implement Iowa Code section 422.28.

701—60.5(422) Protests. A taxpayer may appeal to the director at any time within 60 days from the date of the notice of the assessment of tax, additional tax, interest or penalties. For assessments issued on or after January 1, 1995, if a taxpayer failed to timely appeal a notice of assessment, the taxpayer may pay the entire assessment and file a refund claim within the period provided by law for filing such claims. In addition, a taxpayer may appeal to the director at any time within 60 days from the date of notice from the department denying changes in filing methods, denying refund claims, or denying portions of refund claims.

This rule is intended to implement Iowa Code sections 421.10, 421.60 and 422.28.

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